



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/161823

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a telephonic hearing was held on December 09, 2014.

The issue for determination is whether the agency correctly determined petitioner's assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Thomas Balgeman
1101 North Mayfair Rd Suite 200
Wauwatosa, WI 53226-1406

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner applied for Institutional MA on September 2, 2014.
3. Petitioner's first continuous period of institutionalization began in February 2014.

4. On October 28, 2014 the agency issued a notice of decision stating that petitioner's MA application was denied due to excess assets.
5. Petitioner's assets as of February 2014 totaled \$28,922.80.

DISCUSSION

Medical assistance rules usually limit eligibility to those whose assets do not exceed \$2,000. But an institutionalized person can approach or reach this limit by allocating assets to her spouse who remains in the community. This provision is meant to prevent the community spouse from falling into poverty. *See* Wis. Stat. §49.455. The amount a spouse can allocate depends upon the couple's total assets when the agency assesses them. Wis. Stat. §49.455(6).

Section 49.455(5)(a)1. of the Wisconsin Statutes requires the agency to "determine the total value of the ownership interest of the institutionalized spouse plus the ownership interest of the community spouse in resources as of the beginning of the first continuous period of institutionalization beginning after September 29, 1989.." Section DHS 103.075(3)(c) of the Wisconsin Administrative Code states: "'Continuous period of institutionalization' means an individual has resided in or is likely to remain in an institution for at least 30 consecutive days." There was no dispute that the petitioner was institutionalized in February 2014. Based upon this, I find that the county agency had legal authority to assess the total countable assets of the petitioner and his spouse as of February 2014.

The only asset in dispute in this case relates to approximately \$431,000 which was transferred within the lookback period from petitioner to his children. Petitioner's son testified that these monies were transferred to avoid probate and that he considered the monies a loan because he felt he would have a legal obligation to pay his parents the money back. The basic gist here on appeal is that if these monies are considered a loan, then they might be counted as an available asset at the time of the asset assessment, which would then create a higher asset limit, which would then put the petitioner under the asset limit, which would then make them make him asset-eligible for MA.

Loans are a countable asset under MA. *See Medicaid Eligibility Handbook (MEH)*, §16.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. However, there are no loan documents here to show that the transferred funds were a loan. Rather, I have the petitioner's son's "feeling" that this was a loan because he would have always paid his parents back. An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

MEH, §16.2.1. There is no evidence to suggest that the monies transferred to petitioner's children meet these requirements. Thus, the agency correctly did not count those transferred funds as an asset at the time the asset assessment occurred.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's assets as of February 2014.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of January, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 15, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability
Attorney Thomas Balgeman